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MAINE'S EXPERIENCE WITH THE INITIATIVE AND REFERENDUM

By J. William Black, Ph.D.,
Professor of History, Colby College, Waterville, Maine.

As the result of an agitation of several years standing, and in response to the petitions of a number of towns in "The District of Maine," as that portion of Massachusetts now comprising the State of Maine was then known, the General Court of Massachusetts, on June 19, 1819, passed an act, entitled the "Articles of Separation," giving the people of Maine the privilege of voting upon the proposition of separating from Massachusetts and forming "a separate and independent government within said district." At a special election held in Maine in July of the same year, in accordance with the provisions of the articles of separation, the people voted by a large majority to separate, and in the following October held a convention in Portland and framed a constitution for the proposed new state. Massachusetts confirmed this procedure, February 25, 1820, by the passage of the act of cession, in which the general court formally consented to the creation of a separate state in "The District of Maine;" and an act of congress, passed March 3, 1820, admitted Maine to statehood and decreed that the recognition of Maine as a state in the Union should date from March 15, 1820.

The constitution, which was adopted in 1819, has served the state ever since as its fundamental and organic law, without radical change or without the calling of subsequent constitutional conventions. Changes in the constitution have been made, however, through the process of amendment, twelve such amendments being added between 1819 and 1875. In the latter year, the governor of the state, in lieu of the calling of a convention, and by the authority of the legislature, appointed a constitutional commission to recommend further changes in the constitution. This commission proposed a number of amendments, and of this number nine were adopted by the people in the annual election of September, 1875. The nine amendments, together with the twelve previously adopted,

were incorporated by the chief justice of the state, acting under the authority of the legislature, into the body of the constitution, and the instrument in its revised form was approved by the legislature, February 23, 1876, and became forthwith "the supreme law of the state." By such procedure a revised constitution was secured without the trouble, expense, and delay incident to the calling of a constitutional convention.

Since 1876, thirteen other amendments have been added to the constitution, including the change from annual to biennial elections in 1879, the prohibitory amendment in 1884, and the referendum law of 1909.

In the adoption of all these amendments, the method prescribed in the constitution (art. x, sec. 2) has been followed; that is, the amendments were first passed by a two-thirds vote of both houses of the legislature, and then submitted to the people of the several towns throughout the state who ratified the amendment by a majority vote.

In 1875, a new amendment was incorporated in the constitution (amendment XIX),[1] which, for the first time authorized the legislature "by a two-thirds concurrent vote of both branches," . . . to call constitutional conventions, for the purpose of amending the constitution.

No use has yet been made of this constitutional amendment, in spite of the fact that the constitution is now more or less a piece of patchwork, due to numerous amendments, and should be subjected to a thorough revision and rearrangement. One great obstacle that stands in the way of the calling of a constitutional convention is the constant fear on the part of a considerable portion of the people that such a revision would result in the reading out of the constitution of the prohibitory law—a condition that has proved a barrier to progressive legislation in the State of Maine.

Maine has felt the influence of the agitation for direct legislation which has spread with great rapidity over the country from west to east, and which began with the action of the people of South Dakota, who were the first to incorporate the initiative and referendum in their state constitution as early as November, 1898. The example of South Dakota was followed in 1900 by Utah, and again in 1902, by Oregon, where the new legislation has had its best and

[1] Now article IV, part third, section 15.

severest test, and has found its most ardent advocates. The Oregon law represents the extreme of direct legislation, and includes a provision for the initiation of constitutional amendments. Much of the credit for the passage of this law is due to the effective and efficient work of an organization known as The People's Power League, which has since continued its activities and has proved an organized instrument for promoting direct legislation on behalf of the people under the new law. In 1904, Nevada adopted the simple referendum, which applies only to statute law; and in 1907, the new State of Oklahoma embodied in her constitution a radical initiative and referendum provision. These experiences, especially those of Oregon and Oklahoma, were observed with interest by the people of Maine. Maine has the distinction of being the first of the eastern states to enact an initiative and referendum law, which was put into effect in 1909.

The history of this movement in Maine covers a period of five years. There has long been a feeling of unrest among important elements of the electorate regarding certain questions of local importance. Maine has vast tracts of unorganized and unsettled lands, some ten million acres in extent, which are owned by a comparatively small number of individuals and corporations, an area which is covered with valuable timber, and has an assessed valuation of fifty million dollars, and, indeed, is probably worth several times that amount. These "wild lands," as they are called, owing to the low valuation assessed upon them and the small state and county taxes which they pay, have yielded an inconsiderable amount of revenue to the state. They are sources of enormous profits to the individuals and corporations owning them, and the feeling is growing that they should pay a larger tax, in the interest of a more equitable distribution of taxes among the people of the organized townships, who are burdened with heavy municipal, as well as county and state taxes, and therefore pay a disproportionate share toward the support of schools and highways.

So liberal has been the policy of the state in the past in disposing of its wild lands, including the earlier grants, in 1836 and subsequent years, to settlers, which were justifiable, and the large grants to railroads and sales at nominal cost to individuals that were made in the period from 1862 to 1875, which were questionable; that almost the entire area, some fourteen thousand square miles

in extent, or the equivalent of one-half of the total area of the state, is in private hands, and the state now retains but a paltry fifty thousand acres of its former vast public domain. Because of their low valuation these lands contribute through taxation less than one-ninth of the state's revenues from direct taxation.[2]

The influence of a powerful lobby at the state house has been successful in heading off efforts to increase the tax on wild lands; and the owners of these lands are strongly fortified by a decision of the Supreme Court of Maine, which prohibits the taxing of wild lands at a higher rate than the state tax imposes upon the settled areas. There seems to be no other way to meet this situation save through the passage of a constitutional amendment, subjecting these lands to a separate classification and independent treatment, but such a proposal has thus far failed to produce results.

To be sure the preservation of the forest is necessary to the preservation of the rivers and upon these the people are dependent for water power, a source of energy with which nature has abundantly endowed the state. The forests are also necessary to the maintenance of the game preserves, which attract thousands of hunters and fishermen to the state every year, and thereby bring large sums into the coffers of the merchants and the railroads—an argument which has constantly served as a defense of low state taxes. The gains from this source, however, are not a sufficient offset for the losses incident to the failure to pursue a policy that would force the development of new agricultural lands, open up the state to larger settlement, and attract immigrants to promote latent industries and increase the wealth of a somewhat backward state.

Maine has also been liberal in the grant of valuable franchises for little or no return, and through her lax corporation laws has become the mother of numerous corporations, many of which should never have been authorized, and whose only justification seemed to be the fees which they yielded, a considerable part of which,

[2] The state tax upon real estate prior to 1910, as shown in the state treasurer's reports, averaged about three mills on the dollar; in 1910 it was increased to five mills, and in 1911 to six mills in order to provide additional funds to pay off a portion of the state debt which had been heavily increased, as noted later on; and for the present year (1912) the rate has been fixed at four mills. This tax yields approximately $1,800,000 of state revenue and three-fourths of this is returned to the towns for school purposes, leaving only one mill for general use. One-ninth of this amount is contributed by the wild lands, which pay also a county tax of two mills. Furthermore, the nine million acres in unorganized townships are now organized into what is called a "fire district," and pay a special tax of one and one-half mills for fire protection, which makes the total tax resting upon these lands seven and one-half mills.

until quite recently, were divided between two of her leading state officials, the secretary of state, and the attorney-general.[3]

The state has also been liberal in the past in rebating the taxes of her railroads, and in granting other privileges and exemptions which have cost her revenue. These are some of the reasons why Maine has been unable to meet the growing demand for better roads, which should be constructed by the state rather than by the local area, and for the improvement of her schools and other state institutions.

Maine's remarkable water power facilities have not been developed beyond a fraction of their possibilities; the Maine farmer has been more conservative and less progressive than his western rival, except in certain industries in which he has shown some specialization, like the cultivation of potatoes in Aroostook County. There has been too much protection and too little reciprocity in both commodity and labor to give Maine the benefit of the rich iron and coal deposits of her neighbor to the north and east, which might well have been turned to the advantage of the state for the employment of her natural resources of stream and forest, and in the saving of a great industry, shipbuilding, in which Maine had such an early and promising start.

These are some of the sources of dissatisfaction with the economic status of the state as it is, and the causes of the migration of so many of the sturdy sons of the Pine Tree State to other states and more enterprising industrial communities. It is often charged that the politicians and "bosses" are responsible for this condition of affairs and have preferred to cover their own pecuniary transactions in wild lands, and in the granting of favors to corporations, by diverting attention from these interests to the issue of prohibition. Hence the interest in the new policy of direct legislation.

Mr. Roland T. Patten, of Skowhegan, formerly editor of the *Somerset Reporter*, was the first to undertake to secure the initiative and referendum for Maine. He was formerly a republican and for a number of years held the office of county treasurer of Somerset county. In 1902 he made an effort to get his party, in county convention, to adopt a plank favoring the adoption of the principles

[3] Formerly the attorney-general and the secretary of state received fees of five dollars each from the organizers of every corporation under the laws of Maine, and these fees in some years amounted to as much as eight thousand dollars for each official. This system was changed by act of legislature in 1905, and since then all corporation fees have been turned into the state treasury.

of direct legislation. Being unsuccessful, he left the party, and became a leader of the socialist party[4] in Maine, and an ardent propagandist of direct legislation. He succeeded in inducing the democratic party to embody such a plank in its platform in 1902. In the legislative session of 1903, a resolve, drawn by Mr. Patten, and presented by the Hon. Cyrus W. Davis, of Waterville, first brought the subject of the initiative and referendum to the attention of the Maine legislature. This measure was referred to the judiciary committee and after a hearing it was voted to refer the matter to the next legislature. The subject was discussed in the gubernatorial campaign of 1904, and enlisted the support of the State Federation of Labor, by whom, through its legislative committee, the campaign for direct legislation was now actively prosecuted. This organization then enlisted the support of the State Grange, and secured petitions, memorializing the legislature, which met in 1905, to enact a bill providing for the submission to the people of a constitutional amendment embodying the initiative and referendum. Such a bill was accordingly presented to the legislature, referred, as before, to the judiciary committee, and after a public hearing, participated in by representatives of the State Federation of Labor, the Grange, the Maine Civic League, and other interested persons, including several advocates of direct legislation from out of the state. An adverse majority report was rendered by the judiciary committee, and though the minority report, which was favorable, was substituted by the action of both houses in the early stages of the progress of the bill, the measure was defeated in its final stages; a turn of affairs, which was charged to the influence of the corporation lobby.

The two attempts thus far had been unsuccessful, but the fight was continued, and preparations were now made for a more systematic campaign. In the summer of 1905, the State Referendum League, similar in purpose to its prototype, the People's Power League in Oregon, was organized, and its constitution sets forth the purpose of the league; namely, to secure "the people's right to a direct vote on questions of public policy." The organization was to be "inter-partisan in membership, its methods . . . non-partisan," and the support of candidates for public office was to be based on the "candidate's attitude toward the purposes of this league." The executive committee of officers of the league was

[4] The socialist party has at present a total strength of about fifteen hundred votes.

assisted by an advisory council, consisting of sixteen members, or one from each county in the state. In article II of its constitution, the league applied the principles of the initiative, referendum, and the recall to its own affairs. Mr. Patten became the press agent of the league, and Mr. Kingsbury B. Piper, of Waterville, its secretary.

The league first endeavored to obtain the support of the master of the State Grange, Obadiah Gardner, now senator from Maine, but was unsuccessful. Nevertheless, the grange itself, at its annual meeting in December, 1905, adopted resolutions favoring the initiative and referendum. Following this action, the league succeeded in securing the adoption of favorable planks in the platforms of both the republican and democratic parties, and both candidates for the governorship in 1906 favored the proposed legislation. The league also carried on a persistent campaign through the mails, calling upon every possible or prospective candidate for the legislature in 1906 to declare himself in a written communication to the league, and to answer "Yes" or "No," to the question whether or not he favored the initiative and referendum. Those who failed to respond at all after a second or third letter of inquiry, were put down as "opposed," and the league directed its energies toward the defeat of such candidates for the legislature of 1907, and in a number of instances was successful. This campaign was greatly strengthened by the political support of the grange, with its sixty thousand members, and the result is seen in the legislation that followed.

The judiciary committee was still opposed to direct legislation, likewise the president of the senate and the speaker of the house, and these obstacles had to be met. There was also a considerable opposition lobby. Still another difficulty presented itself, for the republicans and democrats differed over the scope of the measure they were willing to support. The republicans favored the application of the initiative and referendum to statute law only, while the democrats favored the inclusion of constitutional amendments in the proposed law, as in Oregon and Oklahoma and other states where popular legislation has been tried, and saw in the new legislative device an opportunity to secure a resubmission of the Maine prohibitory law to the voters. It was the latter possibility that made the followers of the prohibition party[5] hesitate at first to accept the proposed law, but, upon being convinced that it would not affect the status of prohibition, they gave it their support also.

[5] The prohibition party normally polls about 1,400 votes in a state election.

It was necessary to reconcile these differences, because of the large democratic representation in the legislature, and in order to secure the necessary two-thirds majority required by the constitution. The republican leader of the house, Hon. George G. Weeks, of Fairfield, presented a bill authorizing the initiative and referendum for statutes only, and conforming with the measure favored by the Referendum League, while the Hon. Charles F. Johnson, of Waterville, now United States senator, introduced a democratic measure, which included constitutional amendments; adding, however, the additional safeguard of requiring double the number of petitioners demanded in the case of a statute law to secure the application of the initiative and referendum to a constitutional amendment. Both party leaders were otherwise in accord on the bill, and the democratic leaders in both houses generously agreed that if the minority (democratic) report should not be substituted by the action of the legislature for the majority (republican) measure, they would vote for the latter; and upon the failure to secure the substitution of the minority for the majority report, they and their colleagues made good their promise, with the result that the Weeks resolve went through without opposition, and was signed March 20, 1907, by Governor Cobb, who had already proclaimed his support of the law, on the ground that it was demanded by public sentiment.

The act was then submitted to the people for ratification or rejection, and a campaign of education was waged among the voters until election day in September, 1908, in order to inform them of the uses and advantages of the proposed amendment. More opposition was encountered from the press and from prominent political leaders, but in spite of this opposition, the measure was ratified by a vote of 53,785 to 24,543; in fact every county in the state voted "Yes." The governor made due "return" of the result to the legislature of 1909, as required by the resolve, and the new law forthwith became a part of the constitution of the state. The essential features of the law are as follows:

The act establishes a people's veto through the optional referendum and provides that, upon receipt, within ninety days after the recess of the legislature, of a petition signed by ten thousand voters, and addressed to the governor and filed in the office of the secretary of state, asking for a reference to the people of any act or resolve of the legislature, the governor shall give notice by proclama-

tion of the time when such measure is to be voted upon by the people, that is, at the next general election, not less than sixty days after such proclamation, and if there be no general election within six months thereafter, he may, and if so requested in the petition must, order a special election not less than four months nor more than six months after his proclamation.

Likewise, twelve thousand electors, by direct petition addressed to the legislature and filed in the office of the secretary of state thirty days before the close of the session, may propose to the legislature any bill or resolve, excepting amendments to the state constitution, which, unless enacted by the legislature without change, shall be submitted to the people. If enacted by the legislature without change, it shall not go to a referendum vote, unless demanded. The governor may, or if so requested shall, order any measure proposed by twelve thousand electors referred to a vote of the people at a special election or at the next general election, in accordance with the provisions of the act. Any measure approved by a majority vote shall take effect, unless otherwise ordered in the law, thirty days after the proclamation of the governor announcing the result of the election.[6]

After the adoption of the initiative and referendum law, the league addressed its attention to the furthering of the following measures: namely, a direct-primaries law, a corrupt practices act, and a new ballot law; demanding that the legislature enact such laws, and threatening in the event of failure, to secure such legislation through the agency of the initiative.

In the election of September, 1908, the people also voted to adopt another amendment to the constitution, which was submitted to them, in accordance with a resolve passed by the legislature and approved March 28, 1907, and which permits the people to vote on constitutional amendments on the second Monday in September immediately following the passage of the "resolve," instead of waiting until the next regular biennial election of the following year, as formerly required by the constitution as amended in 1879.

[6] The above law is similar to the referendum laws of other states in minor details and in provisions for the filing and preparation of petitions and ballots, for the guarantee of the integrity of the signatures of the petitioners, for the establishment of the initiative and referendum in cities for municipal affairs; and in the denial to the governor of the power to veto acts approved by the people under the terms of this law. Limitations of space do not permit the incorporation in this article of the full text of the law which may be found in *Acts and Resolves of the Legislature of Maine* for 1907, chapter 121.

This law went into effect in January, 1909, and constitutes the eleventh amendment since the revision of 1876.

The referendum law has been put to the test four times, the referendum having been used three times and the initiative once; while, in addition, three proposals to amend the constitution have been submitted to the people since the passage of the referendum law. Upon three laws passed by the legislature of 1909, the people demanded the referendum, and these were submitted to popular vote in the election of September 12, 1910, to be voted upon on the same ballot.

The first one, known as Measure No. 1, was entitled "'An act to make uniform the standard relating to the percentage of alcohol in intoxicating liquors,' and providing that alcoholic liquors which may not be sold except by payment of a revenue tax to the United States government shall be declared to be intoxicating liquors within the meaning of all statutes of this state;" in other words, a law fixing the standard of the state the same as the United States revenue standard of one per cent.

Measure No. 2 was entitled "An act to divide the town of York, and establish the town of Gorges," and provided that a certain part of the town of York, in the county of York, shall be set off from the remainder of the town and incorporated into a separate town by the name of Gorges, and that the said town of Gorges should pay for the construction of a new bridge across York River at York Harbor, and for the readjustment and distribution of taxes and other obligations between the two towns.

Measure No. 3 was entitled "An act relating to the reconstruction of Portland bridge," and authorized the county commissioners of Cumberland county to reconstruct the old bridge across Portland Harbor, connecting Portland and South Portland, at such a grade as to cross the tracks of the Maine Central and Boston and Maine railroads, and at a cost not exceeding five hundred thousand dollars, the expense of the construction and maintenance of the bridge to be borne by the county of Cumberland, the Boston and Maine railroad, the Maine Central railroad, and any street railroads that may acquire the right to use the bridge.

While all three of the above measures were placed upon the same ballot for the action of the voters, there are marked variations in the character of the proposed legislation and the results of the

election. Measures 2 and 3 were purely local issues, involving questions in which the mass of the electorate, outside of the communities directly concerned, had little interest, and this is reflected in the vote cast. Scarcely more than one-third of the voters who voted for governor, the candidates for that office polling a total vote of 141,031, took advantage of the privilege of voting on the above questions, while over fifty per cent of the voters voted on the liquor measure, which made a wider appeal, and enlisted, as usual, the greatest interest and occasioned the most debate.

All three measures were rejected, the vote standing as follows:

The Vote.	Yes.	No.
No. 1	31,093	40,475
No. 2	19,692	34,722
No. 3	21,251	29,851

Some of the reasons for these results appear in the following explanations:

The first measure was devised by the prohibition element to stop the sale of numerous light beers, containing a relatively small percentage of alcohol, and to increase the prospect of success in numerous prosecutions for violations of the "Maine Law," in which the defense was frequently urged, often with success, that the liquor in question was not an intoxicating beverage within the meaning of the law, or according to the interpretation of the courts. No active campaign was made on behalf of the measure by the Civic League and other temperance organizations, and it was rejected by the people.

The second measure was the result of a desire on the part of the summer resort community of York Harbor, Maine, to secure a separate town organization and to be free from the control of the "back country" or farming element in the town of York, which usually dominated town meetings and town appropriations, and, according to the claims of the seashore element, had not given the summer resort interests a square deal in the way of appropriations for better roads and sidewalks, and for adequate sewer and lighting privileges. The town of York is one of the largest in the county and has a winter population of 2,600, which increases in the summer to eight or ten thousand people. The controversy, which culminated in 1909, has waged for a decade, and became acute in 1907 over the question of building a bridge across the York River at York Harbor.

The seashore residents, who wanted the bridge, succeeded in inducing the town to vote "to build a bridge as laid out by the county commissioners" and to appoint a "Committee of Four" to act with the three selectmen in building a bridge. But no appropriation was made. The selectmen, backed up by the farming element, opposed the bridge, and the Committee of Four, who represented the seashore residents, out-voted them, and went ahead and built the bridge at a cost of forty-five thousand dollars. Then followed a chapter of agitation over the legality of the action of the Committee of Four, a question still pending in the courts, and the failure of the town government to complete payments on the bridge or to provide for the operation of the draw, which involved the town in a further controversy with the War Department. The War Department compelled the town to open the draw, and some private and tentative arrangement has since been made for its operation. In 1909 this family quarrel was taken to the legislature, where a bill was offered to divide the town of York and establish the new town of Gorges, which was to embrace York Harbor, York Village, and a part of York Corner; or, in other words, the richest part of the town of York, containing two-thirds of the assessed property valuation of the town. It was presented by Representative Marshall, of Portland, whose father is the proprietor of the Marshall House, the leading hotel at York Harbor. This measure, for ostensible reasons, contained no provision, as is usual in such cases, giving the people of the town the privilege of voting upon the proposition. It passed the legislature in the face of an adverse report of the committee on towns and in spite of the strenuous opposition of the representative from York, Mr. Josiah Chase, who, in a spirit of compromise, offered to leave the decision to those voters only who lived within the precincts of the proposed town of Gorges—an eminently fair proposition. These terms were rejected, however, by the friends of the measure, who had the strong support of the Portland delegation and other representatives in the legislature, and in consequence the people of the town of York invoked the referendum and defeated the act by a decisive vote. Undoubtedly, there was merit in the case on both sides, coupled with much ill-feeling and lack of tact. If the bridge controversy had not arisen or if the building of it had been committed to the selectmen alone, with instructions to borrow the necessary money and proceed with the construction, the bill for

the separation of the town would probably never have been presented to the legislature. The weak point in the act was the failure to give the town the benefit of the referendum on a matter of purely local concern. The case was aptly expressed by Attorney-General W. R. Pattangall, who was then a member of the legislature, and who spoke in opposition to the Marshall measure. "I have never before heard," he said, "of a divorce where the action was opposed by both the husband and the wife, and the petition for divorce was presented by the hired girl."

The third measure was likewise a matter of purely local interest, and one that should have been settled by the people of Cumberland county alone. To permit the whole state to vote upon such a question, local, technical, and minute, and without any real knowledge of the merits of the question, is a travesty upon wise legislation. After its passage by the legislature, and without provision for its reference to the people of Cumberland county, opponents of this measure invoked the referendum law, which required a state-wide vote, and succeeded in defeating it, in spite of the fact that there was a pronounced public sentiment in favor of the reconstruction of this old and worn-out bridge. Considerable campaigning was done in Portland, and the discovery of the usurpation by the Boston and Maine Railroad Company of rights of way for additional tracks on the "county way," without legal authority, and the attempt made by the railroad interests, in the framing of the measure, to legalize by said act "all such railroad crossings on the county way which forms the approach to said bridge," occasioned distrust of the motives behind the act, and caused its rejection by the people.[7]

In the election of 1910 just referred to, in which the new referendum law was given its first test, a political overturn resulted in the election of the democratic candidate for governor, the Hon. Frederick W. Plaisted, and a democratic legislature which stood 86 to 65 in

[7] In the same election (September, 1910) four questions were submitted to the voters of the county of York, as follows:

1. Shall the shire town of York county be changed?
2. If it be changed, shall Saco be the shire town?
3. If it be changed, shall Kennebunk be the shire town?
4. If it be changed, shall Sanford be the shire town?

The town of Saco was anxious to secure the removal of the county seat from York to Saco, and the representatives of the former town and their supporters secured the passage of the above legislative act, submitting these questions to the action of the electorate—the usual procedure in cases of local concern. The citizens of Saco worked hard and conducted an active campaign, but the measure was defeated by a vote of 8,021 to 3,697; though Saco secured the largest preference vote (3,775) among the bidders for the county seat, in the event of a change. See *Laws of Maine* for 1909, ch. 183, p. 506.

the house; and 23 to 8 in the senate. The principal issue of the campaign which contributed largely to democratic success was the question of the "resubmission of the Prohibitory Law," coupled with the abolition of the obnoxious "Sturgis Law" of 1905, which gave to the "Sturgis Commissioners" and their deputies the right to invade cities and towns throughout the state and supersede the local authorities, where necessary, for the enforcement of the "Maine Law." While the fathering of this issue by the democratic party helped it to victory, the weakness of the Fernald administration that preceded, and the increase of the state debt by $1,500,000 without specific provision for its payment, opened that administration to charges of extravagance and inefficiency, produced a noticeable apathy among republican voters generally, and contributed to democratic success.

In fulfilment of party pledges, the Maine Legislature of 1911 repealed the Sturgis Law, February 25, 1911,[8] and passed a resubmission act,[9] in the form of a proposal to amend the constitution of the state by abrogating and annulling "the twenty-sixth amendment adopted on the eighth day of September, 1884, relating to the manufacture and sale of intoxicating liquors;" the vote in favor of this resolve being 104 to 40 in the house, and 23 to 7 in the senate, an ample margin above the necessary two-thirds.[10]

An active and bitter campaign was waged throughout the state during the summer of 1911, in the press and on the stump, the state was placarded, and the Anti-Saloon League and the Woman's Christian Temperance Union brought the forces of their organizations both within and without the state to bear upon the campaign. The result of the September election was very close, remaining in doubt for some days. The first announcements gave the victory to the resubmissionists, but later corrections of errors, due to carelessness on the part of town clerks in reporting the returns of certain outlying townships to the secretary of state, which were rectified in the canvass before the governor and council, showed a "No" vote of 60,853, and a "Yes" vote of 60,095, or a majority of 758 against resubmission, and in favor of the retention of the Maine Law.[11]

[8] See *Public Laws of Maine*, 1911, ch. 4.

[9] See *Resolves of Maine*, 1911, ch. 35.

[10] While this was essentially a democratic measure, twenty republicans in the house and one in the senate voted in favor of the resolve.

[11] It is an interesting circumstance that all of the cities of Maine voted for resubmission with the single exception of Calais, a small city of 6,116 population on the New Brunswick border.

On the same ballot with "Question No. 1," which was submitted to the people in the election of September 11, 1911, were two other proposals to amend the constitution, known as "Questions No. 2, and No. 3," and also a "Direct Primaries Act" (Question No. 4), which was the first and only act thus far "initiated" by the people under the provisions of the new referendum law.

Question No. 2 was a proposal to amend the constitution making Augusta the seat of government in the state. The purpose of this measure was to settle permanently the question of the location of the capital, and quiet an agitation for the removal of the capital to Portland, which began as far back as 1886. Portland's effort to secure the capital in that year was defeated before the legislature, and was renewed again in 1907, when her citizens offered to contribute a million dollars toward the construction of a new and larger state building, if the capital were removed to the latter city. This second effort was defeated through the activities of resourceful representatives and citizens in Augusta, who, in the following legislature of 1909, secured an appropriation of $350,000 for the repairing and enlargement of the capitol building, and who organized a private syndicate, The Augusta House Company, for the improvement of the hitherto inadequate hotel facilities of the capital city. The enlarged capitol was completed and occupied by the legislature for the first time in 1911. Fearing a renewal of the agitation for removal to Portland, especially if Portland should be permitted to increase her debt limit to seven and a half per cent, a proposition placed before the people on the same ballot, the above resolution was enacted and the electorate voted by 59,678 to 41,294, to retain the seat of government at Augusta. The putting of such a measure into Maine's fundamental law is of doubtful value.

Question No. 3 was likewise a proposal to amend the constitution, its purpose being to permit "towns having a population of forty thousand inhabitants or more, according to the last census taken by the United States, to create a debt or liability which, single or in the aggregate, equals seven and one-half per centum of its last regular valuation, provided the increase in the amount of debt be no greater than one-quarter of one per centum over the present rate of five per cent in any one year." The direct object of this measure was to allow the city of Portland, the only city in the class designated in the resolution, to disregard article XXII of the consti-

tution, which imposes a maximum debt limit of five per cent of their property valuation upon cities and towns, and to extend her debt limit for the purpose of borrowing needed funds for municipal improvements, including payment for her new city hall, and the improvement of her highways and bridges. The proposed amendment was adopted by a vote of 39,242 to 38,712; and a precedent was established which may be used in the future to break down the constitutional debt limit of five per cent now resting upon other cities and towns, which to-day is a serious handicap to them and stands in the way of the public acquisition and management by the municipality of enterprises and utilities, such as water and lighting service, which could be operated without burden to the taxpayers and upon a self-sustaining or even profitable basis. The extension of this amendment to the smaller cities would do away with the resort to such expensive makeshifts as "water districts," under separate corporate organization and responsibility, when necessary to provide a public service and to maintain at the same time the fiction of keeping within the constitutional debt limit.

Both of these questions concerned certain localities in the state more than others, and this was especially true of the third proposal, upon which the smallest total vote was cast.

Question No. 4, unlike the other three questions, was not a proposal to amend the constitution, but "an act to provide for the nomination of candidates of political parties by primary elections," whereby "all nominations of candidates for any state or county office, including United States senator, member of congress and member of the state legislature, shall hereafter be made at and by primary elections held in accordance with the provisions of this act." The vote on this act was: Yes, 65,810; No, 21,774.

The history of this measure, which is popularly known as the "Davies Law," is briefly as follows: The agitation for a direct primaries law began in 1908, with the organization of a Direct Primaries League. In 1910, the democratic state convention inserted a plank in its platform in favor of direct primaries. This was followed a month later by the insertion of a similar plank in the platform of the republican party. In the governor's message, which was read at the opening of the legislative session of 1911, a direct primaries' law was recommended and outlined; and in accordance therewith, a bill was drafted by Nathan Clifford, president of

the senate, and William M. Pennell, of Portland, and referred to the judiciary committee. This bill, popularly known as the "Pennell Law,"[12] provided for the adoption of the direct primaries, limiting them to the selection of candidates for the governorship, for membership in congress, and the expression of a preference for United States senator; the feeling being that it would be better first to try this new and experimental legislation upon the larger offices, in which the interest of the electorate is more widespread. Many of the best features of this measure were taken from a caucus bill offered in the legislature of 1907, by Elwin Gleason, a representative from Mexico. Mr. Howard Davies, a republican and a representative from Portland, also introduced a direct primaries bill which included, in addition to the above, all candidates for state and county offices; and this was likewise referred to the judiciary committee. The judiciary committee reported as follows: Three of its ten members favored no legislation; two, the Davies bill, and five, the Pennell bill; and the house rejected the Davies bill, 76 to 15, and adopted the Pennell bill by a vote of 75 to 20, an action which the senate concurred in without debate or division.

In the summer of 1910, Mr. Davies invoked the initiative on behalf of his measure, and with the aid of the Direct Primaries League, secured the twelve thousand petitioners required by the law. The act was then submitted by the governor to the people in September, 1911, carried by the large vote indicated above, and immediately took the place in the statutes of the Pennell law, which did not live long enough for a test at the polls.

This is the only instance thus far of the use of the initiative, and the law which it has introduced was tested for the first time in the primary elections held on Monday, June 17, 1912.

The Davies law, like the Wisconsin law, provides that nominations for all offices, including candidacy for the United States senate, must be made by the filing of nomination papers by the candidate, signed by one per cent of the voters in the electoral district for which he is a candidate. This percentage is based on the last gubernatorial vote. Such nomination papers must be filed with the secretary of state by the first Monday in May, and the elections are held biennially on the third Monday in June. The law further provides for the holding of state conventions prior to the election for the purpose of

[12] See *Public Laws of Maine*, ch. 199.

framing a party platform and selecting committees; and in this respect differs from the Wisconsin law, where the candidates meet after their primary and formulate their platforms and select their campaign committees.

The first primary election ever held in Maine occurred on June 17, 1912, and drew out a very light vote throughout the state. The principal contests centered about the republican candidates for United States senator and governor, and there were three candidates in each instance; and yet lack of popular interest in the primary is reflected in the fact that in Waterville, the home of the leading republican candidate for governor, the vote was 429, scarcely one-half of the normal republican vote of the city, and this ratio is sustained in other electoral districts throughout the state. Experience will doubtless lead to further modification and revision of the present primary law, notwithstanding the care with which it was framed,[13] and it may prove advisable to adopt Wisconsin's remedy of providing for majority nominations by requiring a second election, when necessary to stimulate greater interest in the primaries and do away with a choice of candidates determined merely by a minority or plurality vote.

While the above include all the cases of the use of the new referendum law up to the present time, several other measures have recently been passed by the legislature of Maine, that are traceable to the sentiment for direct legislation and political devices to increase the responsibility of the electorate. These include "The Corrupt Practices Act," enacted and approved March 29, 1911,[14] and "An act to provide for the use of uniform ballot boxes and for the preservation of ballots cast at elections," which was enacted at the special legislative session of 1912, and approved March 23, 1912. The first of these statutes is really supplementary to the direct primary law and extends the safeguards of that act to regular elections. It prohibits all election expenditures, save those made by an authorized "treasurer or political agent," defined in the act, but permits a candidate to "pay his own expenses for postage, telegrams, tele-

[13] The primaries law, in the preparation of which Mr. Davies had the assistance of Mr. Herbert M. Heath, of Augusta, and others, is elaborately and carefully drawn and covers seventeen printed pages. It contains minute provisions concerning the preparation of ballots, the enrolment of voters, the handling of the returns, the correction of errors; and compels all candidates to make full return of their campaign expenditures, and imposes limitations upon the amount that may be expended and penalties for violations of these provisions.

[14] *Acts and Resolves of Legislature*, ch. 122.

phones, stationery, printing, express, and traveling." It defines and limits the purposes for which expenditures may be made by the "treasurer or political agent," and requires him to file within fifteen days after the election, an "itemized sworn statement" with the secretary of state, or other proper officer named in the act, of all moneys received and expended. The same requirement is imposed upon every candidate for public office, with a heavy fine for non-compliance; and an elaborate definition of what constitutes corrupt practices at elections, with the penalties involved and the methods of instituting procedure to determine guilt, are described in sections 11 and 12. If a candidate be found guilty, the election is also declared void, the governor must issue a writ for a new election, and the guilty candidate is rendered ineligible for any public office for the term of four years. The second act provides for the use of uniform state ballot boxes in all polling places, and the transmitting of the returns within three days of all ballots by the town clerks to the secretary of state, who is instructed to preserve them for a period of six months. Proper provision is made for the correction of errors in the returns. The new feature of the act is the provision for the return of all ballots to the secretary of state's office, instead of leaving them in the care of the various town clerks, scattered over the state, as formerly, and is an improvement over the old law. The ballot box act is a democratic measure, however, and there are indications now that the republican state committee intends to invoke the referendum against it.

A bill providing for the recall of all holders of public office in the state was presented in the legislature of 1911, by Mr. Howard Davies, of Portland, but there was so little interest in the measure, that it was not pressed.

It is too early yet to determine what the effect of the referendum law may be, and whether or not the experience of Maine will be similar to that of other states that have adopted the principle of direct legislation. The people of Maine are by nature conservative, and have not as yet made undue haste in using the new legislative instrument. They look upon the law as a safeguard against ill-advised and corrupt legislation, as a check upon the lobby and the power of the old-time political boss, and regard the negative and potential effects of the law and the weapon which it places in the hands of the people to be used when needed against undesir-

able legislation and bills drawn in the interest of corporations and at the expense of the people, as among the most beneficial features of the act.

Already there are indications that the law will be more frequently used in the future, and that it will be increasingly difficult to secure results through the legislature alone. It is uphill work at best to get things done by a legislature, and the burden falls upon a comparatively small group of aggressive leaders. The legislator is timid in the face of the threat of the referendum, and will prefer to shift the responsibility to the people, or he will be indifferent to the fate of legislation, or careless in its preparation, contenting himself with the thought that the electorate will take care of it. A large part of such legislation is too technical, too detailed, or too local, or too remote in its effect, for the average voter to give it any thought or concern.

To the extent that it is used negatively or as a safeguard, as in the case of the town of York, above referred to, to that extent it may prove a useful adjunct to legislative procedure. If used otherwise, it may produce confusion, instability, and other legislative ills, such as now threaten the people of Oregon.